

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| THE NEW YORK TIMES COMPANY, and ERICA GREEN, | : | X |
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| Plaintiffs, | : | |
| | : | |
| - against - | : | <u>COMPLAINT</u> |
| | : | |
| DEPARTMENT OF EDUCATION, | : | |
| | : | |
| Defendant. | : | |
| | : | |
| | | X |

Plaintiffs THE NEW YORK TIMES COMPANY and ERICA GREEN, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from the Department of Education (“DOE”) in response to a request properly made by Plaintiffs.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Plaintiff Erica Green is a reporter for *The New York Times* newspaper and an employee of The New York Times Company.

4. Defendant DOE is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. Plaintiffs have exhausted all administrative remedies available in regard to the request at issue. *See* U.S.C. § 552(a)(6)(C).

FACTS

8. On May 14, 2018, Ms. Green submitted a FOIA request (the “Request”) to DOE (18-01896-F), seeking “all emails sent and received by all employees, including all accounts used by Education Secretary Elisabeth ‘Betsy’ DeVos, at the U.S. Department of Education” between February 14, 2018, and May 14, 2018, containing any of the following terms: “Parkland,” “school shooting,” “Broward County,” “Marjory Stoneman Douglas High School,” “Robert Runcie,” “Nikolas Cruz,” “PROMISE,” “Senator Rubio,” “White House,” “Federal Commission on School Safety,” or “discipline summit.”

9. On May 15, 2018, DOE acknowledged receipt of the Request.

10. On June 1, 2018, DOE emailed Ms. Green to inform her that it was still processing the Request, and that it was unable to respond within 20 working days of its receipt.

11. On June 12, 2018, at the request of and in consultation with DOE, Ms. Green narrowed the scope of the Request. As amended, the Request seeks “all emails sent and received” by Education Secretary Elisabeth “Betsy” DeVos (on all accounts), Kent Talbert, Jason Botel, David Eisquith, Nathan Bailey, Josh Venable, Peter Oppenheim, Candice Jackson, and Ebony Lee, between February 14, 2018, and May 14, 2018, containing any of the following

terms: “Parkland,” “school shooting,” “school safety,” “Broward County,” “Marjory Stoneman Douglas High School,” “Robert Runcie,” “Nikolas Cruz,” “PROMISE,” “guns,” “Federal Commission on School Safety,” and “discipline summit.”

12. On July 13, 2018, DOE contacted Ms. Green to inquire whether she wished to exclude “mass mailings from news sites” and “Department assembled news clips from various news sources” from the scope of the Request. Ms. Green emailed DOE that same day to confirm that she did.

13. To date, DOE has not made a determination regarding the Request.

COUNT I

14. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

15. DOE is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

16. Plaintiffs have exhausted all administrative remedies under FOIA, because DOE has failed to act on the Request within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A), (C).

17. Accordingly, Plaintiffs are entitled to an order compelling DOE to produce records responsive to the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

18. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

19. Order DOE to provide the requested records to Plaintiffs within 20 business days of the Court's order;

20. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

21. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 24, 2019

/s/
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